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09/939,066	08/24/2001	Joan LaVerne Mitchell	CHA920010012US1	4252
23550	7590	04/01/2009	EXAMINER	
HOFFMAN WARNICK LLC			CHEN, WENPENG	
75 STATE STREET				
14TH FLOOR			ART UNIT	PAPER NUMBER
ALBANY, NY 12207			2624	
			NOTIFICATION DATE	DELIVERY MODE
			04/01/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JOAN LAVERNE MITCHELL and RAVI PRAKASH

Application No. 09/939,066
Technology Center 2600

Mailed: March 31, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

The following prior art reference cited in paragraph 8 of the June 22, 2007 Examiner's Answer was not located in the Image File Wrapper (IFW)

Ishida JP 09181892 A July 1997

The above listed reference is needed to process the appeal properly.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference(s) Ishida JP 09181892 A in rejecting the claims. Full certified English translation(s) of the above noted foreign reference(s) are not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document "in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection" (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) have the above listed reference scanned into the IFW;
 - 2) if the above reference is not in English, to obtain a full certified English language translation(s) of the above noted foreign reference(s);
 - 3) to complete the IFW by having the translation(s) obtained scanned into the IFW file;
 - 4) to provide copies of the translations obtained to Appellant(s);
- and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/eld

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